

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CASH DEPOT, LTD.
d/b/a 1ST ISO PROCESSING
1740 Cofrin Drive, Suite 2
Green Bay, WI 54302,

Plaintiff,

-vs-

FIRST AMERICAN PAYMENT SYSTEMS, L.P.
100 Throckmorton Street, Suite 1800
Fort Worth, TX 76102

Defendant.

Judge: William C. Griesbach

Case No.: 15-CV-_____

COMPLAINT

Plaintiff, by and through its attorneys, the Law Firm of Conway, Olejniczak & Jerry, S.C., as and for its Complaint against the above-named Defendant, alleges and shows to the Court as follows:

PARTIES

1. Plaintiff, CASH DEPOT, LTD. d/b/a 1ST ISO PROCESSING (hereinafter “1ST ISO”), is a Wisconsin corporation with its principal place of business located at 1740 Cofrin Drive, Suite 2, Green Bay, Wisconsin 54302.

2. Defendant, FIRST AMERICAN PAYMENT SYSTEMS, L.P. (hereinafter “First American”), is a limited partnership doing business in the State of Wisconsin with a principal office at 100 Throckmorton Street, Suite 1800, Fort Worth, Texas 76102. First American’s general partners are Neil Randel, Debra A. Bradford, Alan R. Struble, Mike Lawrence, Rick Rizenbergs, and Brian Dorchester, all of whom are citizens of Texas. First American’s limited

partner is the Ontario Teachers' Pension Plan, whose trustees are Jean Turmel, Rod Albert, Bill Chinery, Steve McGirr, John Murray, Barbara Palk, Sharon Sallows, David Smith, and Daniel Sullivan, all of whom are Canadian citizens residing in Canada. Upon information and belief, First American's registered agent is Corporations Section Secretary of State, 1019 Brazos, Austin, Texas 78701.

JURISDICTION AND VENUE

3. Pursuant to 28 U.S.C. § 1332 (diversity of citizenship), this Court has jurisdiction over this matter. The parties are citizens of different states and the matter in controversy exceeds, exclusive of interest and costs, \$75,000.00.

4. Upon information and belief, Defendant conducts business in this judicial district and a substantial part of the event or omissions giving rise to the claim occurred in this judicial district. Accordingly, venue is proper under 28 U.S.C. § 1391.

FACTS

5. Effective March 1, 2003, Concord Processing, LP ("Concord") and First American entered into a Processing Agreement (the "Agreement"). A copy of the Agreement, including all addenda and schedules thereto, is attached hereto as **Exhibit A**.

6. The Agreement had an initial term of sixty-six (66) months from the date Concord's services commenced, with a provision for one-year renewal terms thereafter.

7. The Agreement obligated First American to pay Concord a Monthly Minimum Fee of \$25,000.00 from the fifth year of the initial term through the end of the initial term.

8. Effective August 1, 2007, Concord, now known as First Data Retail ATM Services, L.P. ("FRDAS"), and First American entered into a Second Addendum for Special Terms (the "2007 Addendum"). A copy of the 2007 Addendum is attached hereto as **Exhibit B**.

9. The 2007 Addendum extended the initial term of the Agreement to March 1, 2011.

10. Effective January 1, 2011, FDRAS and First American entered into another Second Addendum for Special Terms (the “2011 Addendum”). A copy of the 2011 Addendum is attached hereto as **Exhibit C**.

11. The 2011 Addendum extended the initial term of the Agreement to December 31, 2015.

12. Section 3 of the 2011 Addendum altered Paragraph 17 of the Agreement as follows:

Cancellation Fee. Section 17 to the Agreement shall hereby be replaced and superceded as follows:

In the event that this Agreement is terminated prior to the end of its then-current term, then User [i.e., First American] agrees to pay an early termination fee (“Early Termination Fee”) in an amount equal to the product of the User’s average monthly fees (i) [sic] if this Agreement has been in effect for 12 or more months, the average amount of monthly billings to User by FDRAS for the preceding twelve (12) months prior to termination times the number of months left in the then-current term times eighty percent (80%). Such Early Termination Fee shall be paid by the User no less than thirty (30) days prior to termination.

13. Effective July 1, 2014, 1st ISO acquired FDRAS’ rights in the Agreement.

14. On May 29, 2015, First American sent 1st ISO a Notice of Cancellation of Processing Under ATM Agreement dated March 1, 2003, Amended August 1, 2007 and January 1, 2011 (the “Notice of Cancellation”). A copy of the Notice of Cancellation is attached hereto as **Exhibit D**.

15. First American has failed to pay 1st ISO the Early Termination Fee required by Section 17 of the Agreement (as replaced and superceded by the 2011 Addendum), despite demand.

16. First American has failed to pay 1st ISO the full Monthly Minimum Fee required by the Agreement for the months of July 2014 - June 2015, despite demand.

17. As a result of First American's breach of the Agreement, 1st ISO has sustained damages in the amount of \$404,037.93.

WHEREFORE, 1st ISO demands judgment as follows:

- A. Compensatory damages in the amount of \$404,037.93;
- B. Prejudgment interest;
- C. Taxable costs; and
- D. Such other and further relief as the Court deems just and equitable.

Dated this 21st day of August, 2015

LAW FIRM OF CONWAY, OLEJNICZAK & JERRY, S.C.
Attorneys for Plaintiff, Cash Depot, Ltd. d/b/a 1st ISO Processing

By: s/T. Wickham Schmidt
T. Wickham Schmidt, State Bar No. 1062002
Jill J. Ray, State Bar No. 1085112

POST OFFICE ADDRESS:

231 South Adams Street
P.O. Box 23200
Green Bay, WI 54305-3200
Telephone: (920) 437-0476
Facsimile: (920) 437-2868
E-Mail: tws@lcojlaw.com

(771509.017-#2112928)